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ZIOLKOWSKI PATENT SOLUTIONS
GROUP, SC (GEMS)
136 S WISCONSIN ST
PORT WASHINGTON WI 53074

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OFFICE OF PETITIONS

In re Patent No. 7,254,623 : DECISION ON REQUEST FOR
Thomas Toth : RECONSIDERATION OF
Issue Date: August 7, 2007 : PATENT TERM ADJUSTMENT
Application No. 10/063,373 : and
Filed: April 16, 2002 : NOTICE OF INTENT TO ISSUE
Atty Docket No. GEMS8081.111 : CERTIFICATE OF CORRECTION
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)," filed October 4, 2007. Patentee requests that the patent term adjustment indicated on the Issue Notification (and on the face of the patent) be corrected from eight hundred two (802) days to eight hundred sixty-one (861) days.

The request for reconsideration of the patent term adjustment indicated in the patent is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **NINE HUNDRED FORTY-NINE (949)** days.

On August 7, 2007, the above-identified application matured into U.S. Patent No. 7,254,623, with a revised patent term adjustment of 802 days. The initial determination of patent term adjustment of 861 days was reduced by 59 days pursuant to 37 CFR 1.704(b) for applicant delay in paying the issue fee. On October 4, 2007, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee) within 2 months of the issuance of the patent. Patentee asserts that the period of reduction of 59 days is improper. Patentee states that the issue fee was paid on January 11, 2007 (which is within three months of mailing of the Notice of Allowance on

December 26, 2006), and verified on May 24, 2007. Patentee states that the delay is the delay by the PTO in verifying payment of the issue fee and not a delay by the applicant in actually submitting payment of the fee.

Patentee is correct. A review of the application history confirms that the issue fee payment was made of record in the financial records of this application on January 12, 2007 with a date of receipt of January 11, 2007. Moreover, a review of the resubmission of the issue fee transmittal on May 24, 2007 (and the fact that the application was never held abandoned) supports a conclusion that the issue fee was timely paid on January 11, 2007; however, the issue fee transmittal was misplaced by the Office. On May 24, 2007, at the request of the Office, then applicant resubmitted the issue fee transmittal (which bore a certificate of facsimile transmission dated January 11, 2007) along with a copy of their USPTO Auto-Reply Facsimile Transmission, confirming receipt of the issue fee transmittal on January 11, 2007. As the issue fee payment was received in the Office within three months of the mailing of the Notice of Allowance mailed December 26, 2006, no reduction pursuant to 37 CFR 1.704(b)¹ is warranted. The reduction of 59 days is removed.

Moreover, pertinent to this case, 37 C.F.R. § 1.703(a) provides that:

The period of adjustment under § 1.702(a) is the sum of the following periods:

- (6) The number of days, if any, in the period beginning on the day after the date that is four months after the date

¹With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

A review of the record confirms that the issue fee was paid and all outstanding requirements were met on January 11, 2007, not May 24, 2007. As such, a period of reduction should have been entered for the Office taking in excess of four months to issue the patent. The period of adjustment for this Office delay is 88 days, counting the number of days in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied, January 12, 2007, and ending on the date a patent was issued, August 7, 2007. A period of adjustment of 88 days is entered.

In view thereof, the patent should have issued with a revised patent term adjustment of nine hundred forty-nine (949) days (861 + 88 days of Office delay and 0 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Certificates of Correction Branch has been advised of this decision. The Certificates of Correction Branch is thereby forwarded this application for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred forty-nine (949)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,254,623 B1
DATED : August 7, 2007
INVENTOR(S) : Toth

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 802 days

Delete the phrase "by 802 days" and insert -- by 949 days--